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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,959	11/21/2003	Paul J. Flanningan	59010US002	3577

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EXAMINER
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PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3772

NOTIFICATION DATE	DELIVERY MODE
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05/08/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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LegalDocketing@mmm.com

<b>Office Action Summary</b>	Application No. 10/719,959	Applicant(s) FLANNINGAN ET AL.	
	Examiner Nihir Patel	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02.15.2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed on February 15<sup>th</sup>, 2007, with respect to claims 1-23 have been fully considered and are persuasive. The previous office action has been withdrawn.

According to the interview held on February 23<sup>rd</sup>, 2007, the applicant and the examiner agreed that a new non-final office action will be issued where the Scholey reference will be applied as a 35 U.S.C. 102(b) reference.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims **1-4, 13, 14, 16-19 and 21-23** are rejected under 35 U.S.C. 102(b) as being anticipated by Scholey et al. (US 6,298,849).
4. As to **claim 1**, Scholey teaches a respirator mask with snap in filter cartridge that comprises providing at least one supporting portion **22** of a face-piece insert **12** (see **figure 1 and column 2 lines 40-50**); providing at least one fluid communication component **24** (see **figure 1A**) separately from the supporting portion of the face-piece insert; and securing the at least one fluid communication component to the at least one supporting portion (see **figure 3**).
5. As to **claim 2**, Scholey teaches a method step of securing a compliant face-contacting member **18** to the face-piece insert (see **column 2 lines 40-50**).

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6. As to **claim 3**, Scholey teaches a method step of securing a harness to the mask body (see **column 2 lines 35-45**).

7. As to **claim 4**, Scholey teaches a method step of providing at least one filter cartridge **32** that is capable of being attached to the at least one fluid communication component (see **figure 1A**).

8. As to **claim 13**, Scholey teaches a respirator mask with snap in filter cartridge that comprises a supporting portion **22** (see **figure 1**); and a fluid communication component **24** (see **figure 1A**) that is non-integrally joined to the supporting portion.

9. As to **claim 14**, Scholey teaches a respirator mask with snap in filter cartridge that comprises a compliant face contacting member **18** that is non-integrally joined to the supporting portion of the face-piece insert (see **figure 2**).

10. As to **claim 16**, Scholey teaches a respirator mask with snap in filter cartridge that comprises a harness for supporting the mask body over a person's nose and mouth (see **figure 1**).

11. As to **claim 17**, Scholey teaches a respirator mask with snap in filter cartridge that comprises a filter cartridge **32** for supporting the mask body over a person's nose and mouth.

12. As to **claims 18 and 19**, Scholey teaches a respirator mask with snap in filter cartridge wherein the fluid component comprises part of an inhalation valve/exhalation valve (see **figure 1**).

13. As to **claim 21**, Scholey teaches a respirator mask with snap in filter cartridge wherein the supporting portion and the fluid communication component are fused together (see **figures 1 and 1A**).

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14. As to **claim 22**, Scholey teaches a respirator mask with snap in filter cartridge that comprises a mask body **10** (see **figure 1**) that includes a face-piece insert **12** that includes a supporting portion **22**; at least one fluid communication component **24** that is non-integrally joined to the supporting portion **22** of the face-piece insert; and a harness for supporting the mask body at least over a person's nose and mouth (see **figures 1, 1A and 2**).

15. As to **claim 23**, Scholey teaches a respirator mask with snap in filter cartridge that comprises at least one filter cartridge **32** that is secured to the mask body at a location where the fluid communication component resides (see **figure 1A**).

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

18. Claims **5-12, 15 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Scholey et al. (US 6,298,849).

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19. As to **claim 8**, Scholey substantially discloses the claimed invention, see rejection of claim 1 above, but does not disclose that at least one supporting portion of the face-piece insert and the at least one fluid communication component are made from similar polymeric materials. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Scholey's invention by providing at least one supporting portion of the face-piece insert and the at least one fluid communication component are made from similar polymeric materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

20. As to **claims 5-7, 9-12, 15 and 20**, close reading of the applicant's specification (see **page 2 lines 25 and 26**) reveals that these components have always been close tolerance or critical elements therefore applicant's designation of critical elements does not carry any patentable weight.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Nihir Patel



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4-30-07